



March 2, 2009

Chad Skelton
The Vancouver Sun
1 - 200 Granville Street
VANCOUVER BC V6C 3N3

Dear Chad Skelton:

Re: Complaint - Duty required by Act; Delta Police Department File FOI-96; OIPC File F08-36465

Further to our conversation on February 24, 2009, I am writing in response to your letter of complaint in which you questioned the adequacy of the Delta Police Department's ("DPD") response to your access request. This is my report regarding the investigation of your complaint. As the portfolio officer assigned to this complaint, it is my role to investigate and make findings, conclusions and recommendations as appropriate.

Chronology

On July 3, 2008, you wrote to the DPD requesting:

"In electronic database format, the rank, name, position, salary and expenses for all sworn officers and civilian staff who earned more than \$75,000 in the most recent fiscal year"

The DPD wrote you on August 14, 2008 and provided you with a paper copy of the information you requested (with the names severed from the records). Subsequently on September 15, 2008, you complained to our office about the adequacy of the DPD's response as they did not give you the records in electronic database format as originally requested.

Issue

The issue in this investigation is whether the DPD fulfilled its obligation under s. 6 of *Freedom of Information and Protection of Privacy Act* ("FIPPA") to adequately respond to your access request. Section 6 of FIPPA sets out the duty of a public body to assist applicants:

Duty to assist applicants

6 (1) The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

(2) Moreover, the head of a public body must create a record for an applicant if

(a) the record can be created from a machine readable record in the custody or under the control of the public body using its normal computer hardware and software and technical expertise, and

(b) creating the record would not unreasonably interfere with the operations of the public body.

The Commissioner has examined this obligation in terms of the duty of public bodies to create records for an applicant. In order F03-19 the Commissioner found that spending an estimated 48 hours of programmer time responding to the applicant's request did not unreasonably interfere with the operations of the public body. In Order F03-16, the Commissioner found that requiring the ministry to create a record in Microsoft Access or Excel did not unreasonably interfere with the operations of the public body. The Commissioner also noted in Order F03-16 that:

Public bodies must ensure that their electronic information systems are designed and operated in a way that enables them to provide access to information under the Act. The public has a right to expect that new information technology will enhance, not undermine, information rights under the Act and that public bodies are actively and effectively striving to meet this objective.

Initially, the DPD did not provide you with the records you requested in electronic form. However the DPD has subsequently agreed to provide you with the records in electronic form (Excel) and did so on February 26, 2009. In my discussions with Laura Jacob at the DPD, she agreed this was the most expedient way to comply with FIPPA and resolve your complaint.

After carefully reviewing the information supplied by the DPD, the concerns raised in your correspondence to me and the information supplied in conversations with the public body, I have concluded that the DPD did not initially provide you with an adequate response within the meaning of s. 6 of the Act. However, after you initiated the complaint with our office, they did give you an electronic copy of the records you requested. I am now satisfied that the DPD has fulfilled its duty to adequately respond to your request as required by section 6 of FIPPA. The records provided do contain some severing and that is being dealt with in a separate Request for Review file.

Under my delegated authority to investigate and resolve complaints, I consider this matter resolved and I will close this file. Please feel free to call me if you have any questions regarding this matter. By copy of this letter I am advising the DPD of my findings and conclusions in this matter.

Sincerely,



Trevor Presley
Portfolio Officer

cc. Laura Jacob – Delta Police Department.



March 2, 2009

Chad Skelton
The Vancouver Sun
1 - 200 Granville Street
VANCOUVER BC V6C 3N3

Dear Chad Skelton:

**Re: Complaint - Duty required by Act; New Westminster Police Service File 08-0340-097;
OIPC File F08-36471**

Further to our conversation on February 24, 2009, I am writing in response to your letter of complaint in which you questioned the adequacy of the New Westminster Police Service's ("NWPS") response to your access request. This is my report regarding the investigation of your complaint. As the portfolio officer assigned to this complaint, it is my role to investigate and make findings, conclusions and recommendations as appropriate.

Chronology

On July 3, 2008, you wrote to the NWPS requesting:

"In electronic database format, the rank, name, position, salary and expenses for all sworn officers and civilian staff who earned more than \$75,000 in the most recent fiscal year"

The NWPS wrote you on August 11, 2008 and provided you with a paper copy of the information you requested (with the names severed from the records). Subsequently on September 15, 2008, you complained to our office about the adequacy of the NWPS's response as they did not give you the records in electronic database format as originally requested.

Issue

The issue in this investigation is whether the NWPS fulfilled its obligation under s. 6 of *Freedom of Information and Protection of Privacy Act* ("FIPPA") to adequately respond to your access request. Section 6 of FIPPA sets out the duty of a public body to assist applicants:

Duty to assist applicants

6 (1) The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

(2) Moreover, the head of a public body must create a record for an applicant if

(a) the record can be created from a machine readable record in the custody or under the control of the public body using its normal computer hardware and software and technical expertise, and

(b) creating the record would not unreasonably interfere with the operations of the public body.

The Commissioner has examined this obligation in terms of the duty of public bodies to create records for an applicant. In order F03-19 the Commissioner found that spending an estimated 48 hours of programmer time responding to the applicant's request did not unreasonably interfere with the operations of the public body. In Order F03-16, the Commissioner found that requiring the ministry to create a record in Microsoft Access or Excel did not unreasonably interfere with the operations of the public body. The Commissioner also noted in Order F03-16 that:

Public bodies must ensure that their electronic information systems are designed and operated in a way that enables them to provide access to information under the Act. The public has a right to expect that new information technology will enhance, not undermine, information rights under the Act and that public bodies are actively and effectively striving to meet this objective.

Initially, the NWPS did not provide you with the records you requested in electronic form. However the NWPS has subsequently agreed to provide you with the records in electronic form (Excel) and did so on February 26, 2009. In my discussions with Lisa Mitchell at the NWPS, she agreed this was the most expedient way to comply with FIPPA and resolve your complaint.

After carefully reviewing the information supplied by the NWPS, the concerns raised in your correspondence to me and the information supplied in conversations with the public body, I have concluded that the NWPS did not initially provide you with an adequate response within the meaning of s. 6 of the Act. However, after you initiated the complaint with our office, they did give you an electronic copy of the records you requested. I am now satisfied that the NWPS has fulfilled its duty to adequately respond to your request as required by section 6 of FIPPA. The records provided do contain some severing and that is being dealt with in a separate Request for Review file.

Under my delegated authority to investigate and resolve complaints, I consider this matter resolved and I will close this file. Please feel free to call me if you have any questions regarding this matter. By copy of this letter I am advising the NWPS of my findings and conclusions in this matter.

Sincerely,



Trevor Presley
Portfolio Officer

cc. Lisa Mitchell – New Westminster Police Services.